

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 In re

02 Civ. 4124 (TPG)
4 THE REPUBLIC OF ARGENTINA

5 _____x

6 New York, N.Y.
March 5, 2004
10:50 a.m.

7 Before:

HON. THOMAS P. GRIESA
8 District Judge

9

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1 (Case called)

2 THE COURT: I would like to talk about some broad
3 scheduling matters. The one principal privilege I exercise as
4 a senior judge is I take an extra month of vacation in the
5 summer, so I am gone June and July. This invariably works out.
6 Lawyers in cases know that and reschedule around that.

7 I think in this case we have to think about what is
8 coming up and work around that. If there are things that
9 cannot avoid coming up in that time period, we have ways to
10 handle that. We have Part I judges to take care of emergency
11 matters. We have undoubtedly a magistrate judge who is
12 available who will be called in on this case or in these cases.

13 I don't need to have any further discussion of that
14 now. Although June seems a long way away in one sense, it is
15 like tomorrow in another sense. That is the way time goes. So
16 let's just leave that subject for now. Maybe we can discuss it
17 as time goes on.

18 We have several cases that need attention today, and
19 there are certain cases where motions for summary judgment are
20 pending. There are issues about standing and issues about
21 ownership. I would like to discuss the standing issue and hear
22 what anybody would like to offer as far as argument in addition

23 to what is in the papers. The floor is open.

24 MR. BOCCUZZI: Your Honor, Carmine Boccuzzi for the

25 Republic of Argentina. I think the problems are pretty much
3

1 laid out in the papers. I would just draw your Honor's

2 attention to the language that we are relying on in the FAA,

3 which is on page 7.

4 What we are talking about here is a global security.

5 These lawsuits are based on the fiscal agency agreement, and

6 that is the document that is claimed to have been breached. If

7 your Honor applies the recently decided New York state cases,

8 the MacKay Shields case and the Oak Tree cases, those make very

9 clear that in this type of situation, where you have a

10 registered holder designated in the relevant agreement or

11 contract as the sole owner, then that registered holder is the

12 party with standing to pursue any claim, including claims based

13 on failure to make payments due under the contract.

14 That is really the issue. It is a simple straight-

15 forward application of the contractual language and there is

16 New York precedent, including by the First Department in New

17 York. That is what the basis of the motion is.

18 Plaintiffs seem to rely primarily on some prefatory

19 language that is found in the FAA on page 7 under the language

20 that says the registered holder is the sole owner for all

21 purposes under the agreement. They argue that because there is

- 22 a statement about the republic understanding that a depository
- 23 might authorize someone to do something, that the depository is
- 24 otherwise the sole party who can take the action, that means
- 25 they have standing to sue.

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- 1 This language, of course, does not purport to undercut
- 2 the rest of the documentary language that we rely on.
- 3 Moreover, none of these plaintiffs, your Honor, even purport to
- 4 have an authorization for the depository. So the situation is
- 5 that language doesn't help the plaintiffs.

- 6 The other expects of these two cases, we raise the
- 7 Etevob and the Franceschi case, which are cases that involve
- 8 each having about 28 to 30 plaintiffs. As you have seen in our
- 9 papers that oppose plaintiffs' motion for summary judgment,
- 10 many of them failed to make a *prima facie* showing that
- 11 sufficient to get summary judgment that they are even
- 12 beneficial owners of the interests in the bonds that they claim
- 13 to own.

- 14 So the standing provision which focuses enforcement in
- 15 the registered holder, which, as the registered holder, has the
- 16 global security and sits on top of the system of book entries
- 17 that goes through the participant, through the participants'
- 18 participants, and then downward ultimately to the beneficial
- 19 owner, that is the best entity to be involved in this process.
- 20 As I said, your Honor, none of these folks, who

21 otherwise, as you see from the papers, have really failed to
22 establish the beneficial ownership, none of them has even
23 purported to get the authorization of this registered holder.
24 That is the basis of the motion.

25 There is a similar motion made in the case involving
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1 Mr. Applestein in the Province case. Again it is also relying
2 on the MacKay Shields and Oak Tree cases.

3 THE COURT: Who are the depositories? What do they
4 do?

5 MR. BOCCUZZI: The depository is an entity like
6 Depository Trust Corporation, DTCC, and they are an entity that
7 holds the global security. They are identified in the
8 documents as holding the global security. They are the entity
9 that in turn has participants --

10 THE COURT: Wait a minute. Let's take the United
11 States. What company is it?

12 MR. BOCCUZZI: The Depository Trust Company, your
13 Honor, DTC.

14 THE COURT: What do they do?

15 MR. BOCCUZZI: They are a corporation that is involved
16 in -- they were established in the seventies, and they are
17 there to operate and be involved in overseeing the system that
18 has registered securities of this type.

19 THE COURT: That is a little vague.

20 MR. BOCCUZZI: They have participants, your Honor.

21 Participants are financial institutions.

22 THE COURT: So you have the Depository Trust Company.

23 MR. BOCCUZZI: Right.

24 THE COURT: Let's say the republic issues a bond, it

25 issues it to the Depository Trust Company.

6

1 MR. BOCCUZZI: They issue a global security, yes, and

2 the Depository Trust Company is the registered holder of that

3 global security.

4 THE COURT: What is meant by a global security?

5 MR. BOCCUZZI: It is opposed to something like a
6 bearer bond. The global security is a security --

7 THE COURT: Is it a bond?

8 MR. BOCCUZZI: Yes. It is an obligation of the
9 republic.

10 THE COURT: Is it a bond?

11 MR. BOCCUZZI: Yes, it is a bond.

12 THE COURT: It is a bond?

13 MR. BOCCUZZI: Right.

14 THE COURT: So the Republic of Argentina issues a
15 bond. You are saying it issues the bond to the --

16 MR. BOCCUZZI: The registered holder.

17 THE COURT: The Depository --

18 MR. BOCCUZZI: Trust Company.

19 THE COURT: -- Trust Company. Why does it issue it to
20 the Depository Trust Company? The Depository Trust Company is
21 not paying for the bond, right?

22 MR. BOCCUZZI: Right.

23 THE COURT: So how does the Depository Trust Company
24 know to get a bond issued to it?

25 MR. BOCCUZZI: Pursuant to the fiscal agency agreement
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1 between the republic and the fiscal agent, that talks about
2 what the bonds or series of bonds are going to be. The
3 Depository Trust Company, its job is to hold the global
4 security.

5 THE COURT: I asked you a specific question. Some
6 individual or company decides to buy some Argentine bonds. How
7 do they buy the bonds?

8 MR. BOCCUZZI: They could call their broker.

9 THE COURT: They call their broker.

10 MR. BOCCUZZI: Right.

11 THE COURT: Their broker calls who?

12 MR. BOCCUZZI: Their broker would go into the market
13 and find a seller of the bonds and purchase the bond.

14 THE COURT: Who is the seller going to be?

15 MR. BOCCUZZI: It could be anyone, your Honor. These
16 bonds trade in the secondary market.

17 THE COURT: So somebody else who is owner of bond,

18 right?

19 MR. BOCCUZZI: Right.

20 THE COURT: Then the person wants to buy or become the
21 owner of these bonds, right?

22 MR. BOCCUZZI: Correct.

23 THE COURT: The Depository Trust Company is not in the
24 market, is it?

25 MR. BOCCUZZI: Not that I know of, your Honor.

8

1 THE COURT: Of course not.

2 MR. BOCCUZZI: But it is sitting on top of the market
3 in terms of when that sale happened.

4 THE COURT: Sitting on top doesn't mean anything. The
5 Depository Trust Company is not in the market selling or
6 buying, right?

7 MR. BOCCUZZI: Correct.

8 THE COURT: So somebody sells some bonds. These are
9 registered bonds and not bearer bonds?

10 MR. BOCCUZZI: Correct.

11 THE COURT: Now, these bonds are registered in whose
12 name? The Depository Trust Company's name?

13 MR. BOCCUZZI: Yes.

14 THE COURT: Obviously, the seller and the buyer, they
15 employ their brokers and the brokers are handling it. What do
16 the brokers do? What does the broker for the seller do after

17 the sale? Does the broker notify the Depository Trust Company
18 or what?

19 MR. BOCCUZZI: It depends. If the broker itself is a
20 participant -- and "participant" is the term of art for people
21 who are participants in Depository Trust Company -- then that
22 participant, the next link in the chain would be the Depository
23 Trust Company. So that book entry would be notified to the
24 Depository Trust Company.

25 THE COURT: What do you mean a book entry would be
9

1 notified?

2 MR. BOCCUZZI: The fact that there has been a transfer
3 of beneficial interest would have to be informed to the
4 Depository Trust Company. It is just a series of book entries,
5 your Honor.

6 THE COURT: I understand. In other words, certain
7 brokers are participants.

8 MR. BOCCUZZI: Yes.

9 THE COURT: They are listed with the Depository Trust
10 Company.

11 MR. BOCCUZZI: Correct.

12 THE COURT: What is the role of a participant?

13 MR. BOCCUZZI: They are just people, financial
14 institutions, who are in the market trading in these bonds or
15 themselves have customers, broker-dealers, who themselves are

16 trading in the bonds. The system is just meant to

17 facilitate -

18 THE COURT: Wait a minute. They are registered or

19 listed with the Depository Trust Company as brokers who are

20 trading in the bonds, right?

21 MR. BOCCUZZI: Correct.

22 THE COURT: Do they trade in their own name or do they

23 represent other people?

24 MR. BOCCUZZI: They would be trading in their own

25 name.

10

1 THE COURT: So they trade in their own name.

2 MR. BOCCUZZI: And they have their own books that

3 would trace to their customers for whom they are trading.

4 THE COURT: You said they trade in their own name.

5 Now, you mention customers. I suppose they do both.

6 MR. BOCCUZZI: Right. For example, there is a broker-

7 dealer and he may have customers. So he may be trading in his

8 own name. But the position that is reflected, for example,

9 with the DTC would be in the name of the participant. Some of

10 it may be for its own account and some of it may be

11 beneficially owned by the next -

12 THE COURT: So the Depository Trust Company doesn't

13 even list the beneficial owners at all, does it?

14 MR. BOCCUZZI: That is by and large correct.

15 THE COURT: They just list participants?

16 MR. BOCCUZZI: Correct.

17 THE COURT: And it is the participants who actually
18 list the beneficial owners?

19 MR. BOCCUZZI: They may or they themselves may have
20 another layer between themselves and the beneficial owners.

21 THE COURT: What layer would that be?

22 MR. BOCCUZZI: For example, it could be a participant,
23 which is Lehman Brothers, and then he could have someone, a
24 broker-dealer, under them. And that broker-dealer may be
25 trading for the ultimate beneficial owner. So there just could

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1 be different layers, your Honor, in terms of what is between
2 the beneficial interest owner and the registered holder, the
3 Depository Trust Company.

4 THE COURT: So you have conceivably these layers: The
5 Depository Trust Company, the participants, other brokers who
6 are dealing with the participants, and the beneficial owners.
7 Conceivably those layers; it could be a little less. Anyway,
8 that is what could happen.

9 Now, if an interest payment is made, who does the
10 republic make it to?

11 MR. BOCCUZZI: The fiscal agent, Bankers Trust under
12 the fiscal agency agreement. That agent pays the depository.

13 THE COURT: So there is a fiscal agent of the bank,

14 and the bank pays the Depository Trust Company, and then it
15 goes on through the chain?

16 MR. BOCCUZZI: Exactly.

17 THE COURT: And gets to the beneficial owner.

18 MR. BOCCUZZI: Yes.

19 THE COURT: What is the language that prevents the
20 beneficial owner from suing?

21 MR. BOCCUZZI: If you look, your Honor, on page 7 of
22 the fiscal agency agreement, that first full paragraph that
23 begins with the language "So long as the depository for global
24 security or its nominee is the registered owner of such global
25 security, such depository or such nominee, as the case may be,

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1 will be considered the sole owner or holder of the securities
2 represented by such global security for all purposes under this
3 agreement."

4 It goes on to state that beneficial owners are not
5 entitled to having a definitive note in their name and will not
6 be considered the owners or holders thereof under such
7 securities or this agreement.

8 Then, the next sentence says, "Accordingly, each
9 person owning a beneficial interest in a global security must
10 rely on the procedures of the depository for such global
11 security and, if such person is not a participant, on the
12 procedures of the participant through which such person owns

13 its interest to exercise any rights of a holder under the
14 securities or this agreement."

15 The next sentence is the language that plaintiffs have
16 relied on to rebut what precedes it.

17 THE COURT: Certainly the governing instruments
18 contemplate the possibility of legal action. That is why there
19 is a waiver of sovereign immunity. I think there is a choice
20 of law, there is an agreement to jurisdiction, all the things
21 that we covered in the earlier summary judgment motions.

22 It would be impossible to create the instruments here
23 without providing for the possibility of legal action. Who can
24 take the legal action?

25 MR. BOCCUZZI: All the rights in terms of the fiscal
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1 agency, your Honor, are couched in terms of the holder, and the
2 holder is the registered holder, who is considered the sole
3 registered holder under the contract.

4 THE COURT: Is the Depository Trust Company filing any
5 lawsuits?

6 MR. BOCCUZZI: We have not heard from the
7 depository --

8 THE COURT: Is the Depository Trust Company
9 participating in any conferences about a debt workout?

10 MR. BOCCUZZI: I am not aware of, that your Honor.

11 THE COURT: No, of course, not. The Depository Trust

12 Company makes a little dab of money by performing ministerial

13 functions. They have no interest that would possibly cause

14 them to go to a meeting about a debt workout or even consider

15 the subject. They would have no interest in filing a lawsuit.

16 what you are talking about is giving them the sole

17 right of action, and that will never happen. They will never

18 sue. They will never sue. Never heard of it.

19 What is really important is the last clause, the last

20 sentence, beginning "The republic understands." That is the

21 important part of that whole paragraph for our purposes. What

22 it does say is that the republic understands that the

23 depositories and the participants will allow the beneficial

24 owners to sue. That is the important part of this paragraph.

25 MR. BOCCUZZI: Your Honor, that has not happened here.

14

1 There has been no showing that there has been any

2 authorization. This is relevant. I understand the Depository

3 Trust Company is not the one --

4 THE COURT: I am sure that that can be accomplished.

5 If the Court called the Depository Trust Company into court, I

6 am sure they would be quite upset that they had to pay a lawyer

7 to come to court, but they would have to. And I think on the

8 spot we would get as many authorizations as necessary. It

9 would just be done. They have no interest in doing it or

10 blocking it.

11 MR. BOCCUZZI: Your Honor, the language that you cite
12 to refers to the participants holding the relevant interest to
13 take such action. In other words, the Depository Trust Company
14 does have an interest in making sure that there is an accurate
15 bookkeeping up and down the chain of who actually is the
16 beneficial owner.

17 THE COURT: They have no interest in engaging in
18 expensive litigation, and they won't ever do it. You know that
19 perfectly well. Have you ever talked to them about the
20 subject?

21 MR. BOCCUZZI: Your Honor, I have not.

22 THE COURT: No, of course not. You know what they
23 would say if Cleary Gottlieb called up and said, look, we
24 represent the Republic of Argentina and we are going go into
25 court and say that you are the only people that can file suit,

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1 what can we really represent to the court about what you will
2 or will not do, we would like to file an affidavit providing
3 the court with information of a practical nature, and would you
4 like to give us an affidavit saying what your intention is
5 about suing on all these defaults?

6 Did you contact them and try to obtain such an
7 affidavit so you could inform the court of what in practical
8 fact would happen with the depository? Did you do that?

9 MR. BOCCUZZI: No, your Honor.

10 THE COURT: Of course you didn't, because you knew
11 what you would find out.

12 MR. BOCCUZZI: If I may, your Honor. In terms of the
13 Province case, Mr. Applestein contacted through his participant
14 the DTCC. So what happens here is there is a verification
15 function that DTC plays, and this is relevant. If looked at -

16 THE COURT: That is another issue.

17 MR. BOCCUZZI: The issue is there is a letter from
18 DTCC to the participant and from the participant to Mr.
19 Applestein, so there is a role. That is authorizing the suit,
20 which at the very least is what this language references.

21 THE COURT: Maybe what we need to do is to have a
22 procedure whereby Cleary Gottlieb -- you are the one raising
23 the point. It seems to me the burden should be on you to
24 arrange the details.

25 MR. BOCCUZZI: Your Honor, the point is proof of
16

1 beneficial ownership. That is the plaintiff's burden. The
2 plaintiffs have to show. They are stating here, your Honor, we
3 want a judgment for X million dollars.

4 THE COURT: Maybe it shouldn't be placed on Cleary
5 Gottlieb. Maybe I will just issue a court order having them
6 come in. Do you suppose they could come in in a half an hour?
7 Somebody could come in.

8 MR. BOCCUZZI: In terms of coming in in a half hour, I

9 am just not sure what you would want them to --

10 THE COURT: Where are they located? Are they down on
11 Wall Street?

12 MR. BOCCUZZI: They are in New York, yes, your Honor.

13 THE COURT: Where?

14 MR. BLACKMAN: They are down on Water Street.

15 THE COURT: That isn't very far. We could adjourn
16 until they are here. I am sure they would sign any one you
17 want them to sign. Do you want to go through that?

18 MR. BOCCUZZI: No, your Honor.

19 THE COURT: Of course not. We are not going to do a
20 lot of foolishness. We are going to get down to practical
21 fact. The fact is that these beneficial owners are entitled to
22 sue. If there are some formalities that have to be carried
23 out, they can be easily carried out, and that's that. That
24 solves the issue of standing, and that is all there is to it.
25 That is the end of it.

1 MR. BOCCUZZI: Yes, your Honor.

2 THE COURT: If you want to insist on formalities, we
3 will have all the formalities, and the question will be who
4 will pay the cost of getting those formalities accomplished.
5 Anyway, we won't worry about that now. We take care of the
6 formalities and that can be agreed upon and that is that.
7 Next question: Ownership.

8 MR. BOCCUZZI: Your Honor, we have raised an issue as
9 to the showing on summary judgment that these folks have done.
10 They started with a lawyer's affidavit, which is proof of
11 nothing. Since then, there have been a variety of affidavits.

12 There are discrepancies in terms, for example, of the
13 amount pleaded and the amount that is shown on the brokerage
14 statement that was submitted. It just doesn't tie together in
15 many places.

16 The burden has been on us, and I think we have met the
17 burden in terms of summary judgment to point out the
18 discrepancies in the failures of proof. That is really the
19 issue.

20 THE COURT: The issue of ownership is a real issue,
21 not something that can be passed over lightly. Let's take it
22 case by case. I know on Kalbermann I denied the motion for
23 summary judgment because there was an issue of ownership. So
24 that is where we need to spend some time.

25 MR. CHERNOV: Can I be heard, your Honor, on Mr.

1 Kalbermann?

2 THE COURT: Yes. You represent?

3 MR. CHERNOV: Your Honor, my name is Joel Chernov. I
4 am with the law firm of Dreier LLP, and we represent Mr.
5 Kalbermann.

6 THE COURT: All right.

7 MR. CHERNOV: Your Honor surely did deny Mr.
8 Kalbermann's first motion, finding that the evidence was
9 insufficient. Your Honor, with all due respect, we believe
10 there was sufficient evidence before the Court, and we made a
11 motion for reconsideration or reargument and submitted a new
12 declaration that hopefully clarified the original evidence and
13 supplemented that evidence.

14 If I can direct the Court's attention to that
15 evidence, I believe you will see that it is plenty clear that
16 Mr. Kalbermann does own the bonds he claims to own. First, I
17 don't know if your Honor has before you Mr. Kalbermann's
18 accounts.

19 THE COURT: Mr. Boccuzzi, he has a good point in that
20 on the issue of ownership one satisfactory way to deal with
21 that would be to go through the process which is outlined on
22 page 7 of the fiscal agency agreement. I was trying to dispose
23 of the standing issue quickly, which I think ought to be done.
24 But there are requirements of these instruments, and I am
25 certainly not ready to say the instruments don't have to be

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1 complied with. I think compliance could be easy and it should
2 be easy. And it should be done with a minimum of expense.

3 Is there not a requirement to go through the
4 procedures talked about in the fiscal agency agreement? Your
5 client is suing --

6 MR. CHERNOV: Mr. Kalbermann is suing the republic.

7 THE COURT: What about those procedures? The thing

8 that does strike me is Mr. Bocuzzi's idea that -- if those

9 procedures are complied with, then that is a very sure way of

10 resolving the issue of ownership. If they have to be complied

11 with, why not do it and then not fight about whether one

12 particular piece of evidence is OK or not?

13 MR. CHERNOV: Your Honor, I don't believe complying

14 with this proceeding would actually solve the problem.

15 THE COURT: Let's go back. Don't you have to comply

16 with the procedures?

17 MR. CHERNOV: Your Honor, we submit that you are

18 exactly correct, that the paragraph you pointed to means that

19 people do not need to go get authorization. It means that

20 everyone understood the way the industry works is that you

21 don't need to go get authorizations.

22 THE COURT: I read it another way. Am I wrong?

23 MR. CHERNOV: I read it, your Honor, that the republic

24 understands that under existing industry practice, if we went

25 out and asked for the authorization, we would be given it or

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1 DTC would give it to Lehman Brothers, for example, and then

2 Lehman Brothers would give it to the beneficial holder. But it

3 is understood. It is not something that has to be done. DTC,

4 as you said, has no interest in having everyone call them up

5 and go through this process.

6 THE COURT: Let's read the sentence, could we?

7 MR. CHERNOV: Surely.

8 THE COURT: "The republic understands that under
9 existing industry practice, if the republic requests any action
10 of holders" — that language is irrelevant.

11 MR. CHERNOV: Correct.

12 THE COURT: Let's start again. "The republic
13 understands that under existing industry practices, if an owner
14 of a beneficial interest in such global security desires to
15 take any action which a holder is entitled to take under the
16 fiscal agency agreement, the depository for such global
17 security would authorize the participants holding the relevant
18 interests to take such actions, and the participants would
19 authorize beneficial owners, owning through such participants,
20 to take such action or would otherwise act upon the
21 instructions of beneficial owners holding through them."

22 Mr. Bocuzzi is certainly correct that the earlier
23 part of the paragraph talks about the depository being the sole
24 owner and being the sole party who can take action, and so
25 forth, does it not?

1 MR. CHERNOV: It does, your Honor. But if you read
2 the entire agreement, you will see that they repeatedly
3 throughout the agreement reference the registered holder. When

4 they wanted to talk about the registered holder, they talked
5 about the register holder. They talked about that repeatedly.
6 In the jurisdiction paragraph, though, notably they don't use
7 the word "registered holder," they only use the word "holder."
8 They also talk in the agreement about aggregating the
9 interests of the holdings, that 25 percent of the holders can
10 accelerating rate and that acceleration can overridden by other
11 percentages of holders.

12 THE COURT: You are saying holders as used in two
13 senses.

14 MR. CHERNOV: Exactly, your Honor. This
15 interpretation that the republic is now putting before the
16 Court doesn't square with what the document intended, and it is
17 the paragraph that you pointed to that shows the true intent.

18 What also shows the true intent, your Honor, is that
19 we have now been before you for the better part of two years
20 and this argument was never raised. The only reason they are
21 raising it now is as a last straw to once again try to stop
22 these lawsuits.

23 This paragraph clearly provides that holders,
24 beneficial owners, have a right to bring suits and they have
25 that right without going back each time to DTC and trying to

22

1 get DTC to give authorizations. DTC says it is understood that
2 if someone went and asked, they would get it.

3 With respect to the proof problems, this really
4 doesn't address the proof problems. The proof problems is DTC
5 doesn't even know, your Honor, as you recognize, who holds
6 what. DTC has no knowledge. The person who has knowledge is
7 either the participant who sells to the beneficial owner --

8 THE COURT: The broker.

9 MR. CHERNOV: That's right, the broker. The broker
10 knows who has it. So if we get an authorization from DTC, that
11 is not going to help our proof problem. Our proof problem has
12 to be addressed by the broker.

13 That is what we have done, your Honor. We have given
14 you the account statements from the broker, we have given you
15 letters from the brokers. The issues they are raising with
16 respect to the proof are things such as the names cut off at
17 the top.

18 Now, they say the names cut off at the top. But did
19 they call me, your Honor, and say, can I have a new copy of
20 that piece of paper so I can see the top? Did they go to
21 court, where we had the originals submitted, so that they could
22 see the name at the top? No.

23 Again, your Honor, they are making mountains out of
24 molehills. They are raising red herrings.

25 The account statement shows the ownership. The

1 letters from the brokers show the ownership. Going back and

2 getting authorization from DTC, who has no idea what beneficial
3 people have or don't have, is not going to help us address the
4 ownership question.

5 THE COURT: I suppose Merrill Lynch is a participant.

6 MR. CHERNOV: Excuse me? Merrill Lynch?

7 THE COURT: You have submitted account statements from
8 Merrill Lynch.

9 MR. CHERNOV: Yes. I don't know each of their
10 participants, but I believe Merrill is a participant.

11 THE COURT: I guess your argument is that Depository
12 Trust Company isn't going to know.

13 MR. CHERNOV: Correct.

14 THE COURT: Merrill Lynch knows, but what you are
15 basically saying is you have enough information from Merrill
16 Lynch in the account statements.

17 MR. CHERNOV: That is correct, your Honor, and those
18 are the statements we have put before you. To the extent some
19 of those statements have issues, we can address those issues.
20 But I don't see why we should be going back to DTC to try to
21 help us resolve the issue.

22 THE COURT: How many bonds did Kalbermann own?

23 MR. CHERNOV: That is the subject of this lawsuit,
24 your Honor. He had five separate purchases, but they are three
25 series of bonds. He has \$840,000 worth of bonds that have an

1 interest rate of 12.375 percent, I believe. He has a \$90,000
2 bond which is at 11 or 11.5 percent, and then a 100,000 bond.
3 That totals 1,030,000, which is exactly what he sued
4 for when he brought the action. He submitted his account
5 statement which shows that. He submitted a letter from his
6 broker which shows that. He submitted the confirmation slips
7 in the original bank statement that shows that.

8 When we first moved for summary judgment, the republic
9 didn't even contest that ownership. Now they do, saying that
10 one of the CUSIP numbers, your Honor, is wrong. Clearly, it
11 was a clerical error. It has the right maturity date, it has
12 the right interest rate.

13 THE COURT: Help me out. There are a lot of papers.

14 It is all in the papers. He owns three sets of bonds?

15 MR. CHERNOV: Yes. If you look at Mr. Kalbermann's,
16 for example, his July declaration, Exhibit A to that
17 declaration.

18 THE COURT: I have it. 90,000 in bonds. There is a
19 confirmation slip.

20 MR. CHERNOV: There is a confirmation slip that he
21 actually in his declaration submitted his confirmation slips
22 that tie in.

23 THE COURT: So he got a confirmation slip dated trade
24 date 2/14/2000, 90,000 bonds bought, right?

25 MR. CHERNOV: Yes.

1 THE COURT: Then you have 200,000 bonds bought, trade
2 date 4/23/2001, confirmation slip. Then 540,000 4/25/2001,
3 that is a confirmation slip. That is all Merrill Lynch.

4 Was the other one the Prudential?

5 MR. CHERNOV: The Prudential, your Honor, which was a
6 purchase for 100,000 on 5/15.

7 Then, your Honor, if you go to the next exhibit, it is
8 not a confirmation slip but I believe it is Mr. Kalbermann's
9 original statement from Bank Leu, and that shows a purchase on
10 the second item, a purchase of a \$100,000 note with an 11
11 percent interest rate and a maturity date of I believe it is
12 October 9, 2006.

13 That is evidenced also, your Honor, if you go to
14 Exhibit C to this declaration. Exhibit C to the declaration,
15 your Honor, has the letter from Mr. Kalbermann's broker, and
16 that is a November 26, 2003 letter. Here he totals those up,

17 And you have the three series of bonds owned by Mr.
18 Kalbermann that again total 1,030,000: The 100,000 bond with
19 the rate of 11 percent, the 90,000 bond with the rate of 11.75
20 percent, and then the 840,000 in bonds with the rate of 12.375
21 percent.

22 He has given the Court the confirmation slips, a
23 letter from his broker, his account statement. We submit, your
24 Honor, that that is sufficient evidence to prove his ownership.

25 MR. BOCCUZZI: Your Honor, if I might?

26

1 THE COURT: Yes.

2 MR. BOCCUZZI: Mr. Kalbermann did come back and re-go
3 over evidence that was before your Honor when your Honor denied
4 his motion for summary judgment because of discrepancies. We
5 acknowledge that he did clear up some of that. But there is,
6 for example, still an outstanding discrepancy where he is
7 claiming in his declaration at paragraph 4 to be holding a face
8 amount of \$100,000 in principal with a CUSIP number that does
9 not match the CUSIP number on the slip he submitted at Exhibit
10 A to his declaration. So at least as to that amount, there is
11 a remaining discrepancy.

12 THE COURT: What is that number?

13 MR. BOCCUZZI: If you look at his declaration, you
14 will see there is a CUSIP number there for 100,000 face amount,
15 040114GD6. And then if you go to Exhibit A, the third page,
16 which D527 is the Bates number, the CUSIP number there is a
17 different CUSIP number there on the bottom. It is 9949L9C.
18 And this is for \$100,000.

19 So we don't have a complete match or corroboration
20 between the documentary evidence and what Mr. Kalbermann is
21 claiming. Of course, the reason why the republic opposed the
22 motion for reconsideration is because of the initial problems
23 your Honor identified in the November 19th denial of summary

24 judgment. They went back, they tried to prove it up, and there
25 is still at least one outstanding discrepancy.

27

1 MR. CHERNOV: Your Honor, clearly that is a clerical
2 error. If you look at Mr. Kalbermann's account statement, it
3 lists -

4 THE COURT: Where is the account statement?

5 MR. CHERNOV: The account statement, your Honor, is
6 annexed to Mr. Kalbermann's original declaration, his
7 declaration of July 8, 2003. Your Honor, I have a copy. If
8 you would like, I could hand it up.

9 THE COURT: What is shown there?

10 MR. CHERNOV: If you look at the last page of the
11 account statement, it shows Argentina, Republic of, global
12 bond. It shows the same bond with the same interest rate, the
13 same maturity date, and it shows that Mr. Kalbermann owns
14 \$840,000 worth of that bond or face value amount of that bond.

15 The last page of it, page 3 of 5, it is listed on top.

16 That is also exactly what Mr. Kalbermann's broker told
17 the Court that Mr. Kalbermann owed, and that is annexed as
18 Exhibit C to Mr. Kalbermann's most recent declaration, his
19 December declaration. If you add together the amounts from the
20 confirmation slips, you again get to 840,000. Each of the
21 confirmation slips gives us the same interest rate of 12.375
22 percent, each gives the same maturity date.

23 Your Honor, the republic is not contending they have
24 issued any other bonds with this maturity date and with this
25 interest rate. Clearly that CUSIP number was a clerical error.

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1 The proof is the account statement and the letter from the
2 broker. The fact that the confirmation slip has an incorrect
3 CUSIP number should not be allowed to defeat Mr. Kalbermann's
4 motion.

5 MR. BOCCUZZI: What normally governs, your Honor, is a
6 confirmation slip. The letter that is annexed as Exhibit C to
7 the Kalbermann declaration itself disclaims that it is going to
8 govern in the event of a dispute. So, again, the document that
9 Mr. Chernov is referring to as Exhibit 1, this is the original
10 document that represents a whole bunch of other bonds, and that
11 is the original source of the discrepancy identified in the
12 November 19th denial of summary judgment. So we are just
13 building on evidence that didn't establish what plaintiff says
14 it is establishing.

15 To get back to the point, at the end of the day for
16 that \$100,000 nobody knows on this record what CUSIP number it
17 is, and that is the way you track a security. This could be
18 cleared up if you got the chain of letters, potentially cleared
19 up, because then someone would have to drill down on what exact
20 CUSIP number we are talking about.
21 Again, CUSIP number is not a mere formality or detail

22 or something minor. It goes to the bond that this plaintiff
23 says they have a beneficial ownership interest in. That is
24 relevant, because at the end of the day that bond will have to
25 be written down at the global level if there is a judgment

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1 entered.

2 THE COURT: It is really preposterous to have a
3 courtroom full of people and two sets of lawyers and a judge
4 haggling about these details. Anybody who has been in the law
5 practice of the kind that is characteristic of the lawyers
6 here, my former law practice, my experience as a judge, we have
7 seen actions brought on behalf of holders of securities. We
8 have all relied on confirmation slips. There is almost never
9 any issue. There are a lot of other issues that you have to
10 worry about, fraud or something like that, but the ownership
11 generally is not a problem.

12 I did deny summary judgment in the first instance.

13 Really, the idea there was to get the situation clarified. I
14 never really doubted that Mr. Kalbermann owned bonds. I didn't
15 think that the lawyer was coming in with a balloon full of hot
16 air. It was a matter of straightening out the accounting and
17 getting things accurate.

18 I am not going to spend a lot of time, as we are doing
19 now, on the ownership issue. If there is a reasonable set of
20 confirmation slips or declarations or whatever, that settles it

21 as far as I'm concerned. It settles it because that is the way
22 it is settled in lawsuits that deal with these subjects.
23 Nobody engages in this kind of exercise, and we are not going
24 to have it.
25 I don't know why there is a difference in CUSIP

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1 numbers. If, as time goes on, it turns out that there is some
2 problem, well, there is a problem. But I do have a set of
3 confirmation slips, I have an account statement, I have some
4 correspondence. I'm sorry to have to worry about a problem of
5 addition. What do you say is the number of bonds he owns?

6 MR. CHERNOV: A million 30,000 in total. 840 plus the
7 90 plus the 100.

8 THE COURT: What is it, 840 plus?

9 MR. CHERNOV: 840,000 was one series, plus 100, plus
10 90.

11 THE COURT: So it is 840 plus 100.

12 MR. CHERNOV: Plus 90, your Honor. Which is
13 1,030,000, and that is what he sued for in the complaint.

14 THE COURT: Again, we have confirmation slips. I am
15 looking at Exhibit A, Merrill Lynch, 90,000, 200,000, 540,000.

16 Then you have the Prudential for 100,000. That is 930,000.

17 Where is the other?

18 MR. CHERNOV: It is the next exhibit, your Honor,
19 which was the Bank Leu statement.

20 THE COURT: I see. That is an additional?
21 MR. CHERNOV: That is the additional hundred.
22 THE COURT: All right. Motion granted.
23 MR. CHERNOV: Thank you, your Honor.
24 THE COURT: Is there any other ownership issue worth
25 talking about, or are we just dealing with matters of detail

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1 which should be straightened out between the lawyers?
2 MR. CHERNOV: I will be happy to deal with the details
3 with Cleary Gottlieb if your Honor would prefer us to proceed
4 in that manner.

5 MR. BOCCUZZI: Your Honor, I am happy to speak with
6 plaintiffs.

7 THE COURT: We are not going to take up time in this
8 courtroom. what I intend to do is to grant the motions for
9 summary judgment that are pending. Any details about ownership
10 can be resolved in the course of pretrial. But I don't think
11 they will need to be resolved. I think there is sufficient
12 evidence.

13 The standing issue, I engaged in a little rhetoric
14 about having all those procedures followed. Nobody in their
15 right mind is going to tax the parties and the Depository Trust
16 Company and Merrill Lynch, and so forth, with a lot of useless
17 procedures. So I am holding that the beneficial owners have
18 standing.